Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

October Term, 1995

JAMES A. HINCHLIFFE;
YONG SUN HINCHLIFFE,
Petitioner(s)

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION;
TRANSAMERICA CONSUMER DISCOUNT CO.

On Petition For Writ Of Certiorari
To The UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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30 pp

QUESTION(S) PRESENTED

1. When important federal questions are unanswered by both the United States court of appeals and the state court; do these matters call for an exercise of the United States Supreme Court's supervisory power?

2. Can a state court decide an important federal question that conflicts with a United States court of appeals, and can a United States court of appeals depart from the accepted and usual course of judicial proceedings, or sanction such a departure by a lower court?

3. Can a United States court of appeals loose jurisdiction over a matter to a lower court?

LIST OF PARTIES

In accordance with United States Supreme Court Rule 14.1(b), the names of all parties in this case appear in the caption of the judgment order of the Court of Appeals on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The January 2, 1996, Judgment Order of the United States Court of Appeals for the Third Circuit appears at (Appendix A) to the petition. The Memorandum/Order of the United States District Court dated June 27, 1995, and entered on June 28, 1995, appears at (Appendix B) to the petition. The February 2, 1996, Sur Petition For Rehearing of the United States Court of Appeals for the Third Circuit appears at (Appendix C) to the petition. The February 26, 1996, Stay of Mandate Order of the United States Court of Appeals for the Third Circuit appears at (Appendix D) to the petition.

JURISDICTION

The Judgment Order of the United States Court of Appeals for the Third Circuit is dated January 2, 1996, and appears at (Appendix A) to the petition. A timely petition for rehearing en banc was denied by Sur Petition For Rehearing dated February 26, 1996, and appears at (Appendix C) to this petition. This petition is filed within 90 days of the entry of the Sur Petition For Rehearing. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Federal Home Loan Mortgage Corporation (Appellee), has prejudiced the petitioners by moving forward in other lower court actions during this matter's pendency in the United States court of appeals.

The Court in its Judgment Order dated January 2, 1996, has clearly overlooked and misapprehended important facts in this case as has the lower Courts and inclusive of the state Court.

The Court in its Judgment Order states; "after consideration of all contentions raised by the appellants", and said is the only statement by the Court in this matter, and indicates that the Court has simply focused on a key word "contentions", yet has failed to elaborate to any degree at all concerning the, so called, contentions.

The contentions of the appellants, debtors James A. Hinchliffe and Yong Sun Hinchliffe, are misconceived by the Courts, and the Bankruptcy Code "core" proceedings have been violated.

This case, as any other case, deserves at least a briefly but detailed memorandum of some kind, and in order to give some kind of substantive understanding of the Court's judgment.

In the Court not seeking inquiry and or investigation of the facts and issues in this matter, the Court has erred from the truth.

These proceedings involves some questions of exceptional importance and inclusive of

actions in the lower Courts and in the state Court.

The appellee has never filed any sort of brief in the United States District Court, even to this day, and with no adverse effect so far to the appellee, yet the failure of the said appellee to file its brief, in the United States District Court, and after the appellants were asked on August 31, 1994, by the Court, to give appellee more time to file its brief, although appellee's time limit had already passed for filing its brief, somshow has become an adversity to the said appellants, debtors James A. Hinchliffe and Yong Sun Hinchliffe.

Appellee alleged that the appellants failed to notice/serve the appellee with a copy of the Notice of Appeal, yet the Court record on appeal clearly shows that the allegations by the appellee not to be true, as well as other allegations made by the appellee and not yet addressed by the Court.

Other crucial issues must be addressed and now in the Supreme Court of the United States, of which has jurisdiction over these matters, from the United States Court of Appeals for the Third Circuit as well as from the lower Courts and including the state Court matter; C.R. 237, 237.1, inter alia, etc..

Treecorp's (new money) funds remain available to petitioners, debtors upon terms agreed previously and disclosed in bankruptcy proceedings.

Petitioner's, debtor's right of recoupment and set-off must be and will be adjudicated by the Court.

In connection with the instant action, the

appellee misconceives the provisions in the Bankruptcy Code "core" proceedings in which governs in and over a conversion from one Chapter to another Chapter whereas any creditor in order to move forward in any action, since the date of the conversion, must do so under the new Chapter of bankruptcy proceedings.

Petitioners, debtors James A. Hinchliffe and Yong Sun Hinchliffe, now express a belief, based on a reasoned and studied judgment, that the United States Court of Appeals for the Third Circuit's decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that this appeal involves questions of exceptional importance.

By the United States Court of Appeals for the Third Circuit having erred in this case, has caused harm to the appellate procedure and therefore has harmed the general public.

The actions, or lack of, taken by the Court has served no useful, nor has it served any beneficial purpose to the Court, the petitioners or to the general public, and this matter is of imperative public importance.

REASONS FOR GRANTING THE PETITION

By use of the United States Supreme Court's supervisory power, important federal questions will be answered that both the United States court of appeals and the state court failed to or were unable to answer.

If possible for a United States court of appeals to loose jurisdiction over a matter to a lower court, perhaps and in fact the Supreme Court of the United States has or gains a full jurisdiction over such matter.

The lower Court's loss of control in this matter became an adversity to the appellants and also due to the lapse in time the appellants were prevented from once again gaining control, and if a precedent is made, becomes of a national importance.

The lower Court also failed to enforce the FRAP 28., FRAP 30., FRAP 31. etc., against the appellee Federal Home Loan Mortgage Corporation for not filing its brief, of which was crucial at that time in this matter as in any case.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition and should issue a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-1637

JAMES A. HINCHLIFFE;
YONG SUN HINCHLIFFE,
Debtors

JAMES A. HINCHLIFFE;
YONG SUN HINCHLIFFE,
Appellants

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION;
TRANSAMERICA CONSUMER DISCOUNT CO.

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 94-cv- 03278)
District Judge: Honorable Louis H. Pollak

Submitted Under Third Circuit LAR 34.1(a)
December 21, 1995
Before: MANSMANN, ALITO and ROTH,
Circuit Judges.

JUDGMENT ORDER

[Dated: January 2, 1996]

After consideration of all contentions raised by the appellants, it is
ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against th appellants.

BY THE COURT,

/s/ Carol Los Mansmann

Carol Los Mansmann
Circuit Judge

Attest:

/s/ P. Douglas Sisk

P. Douglas Sisk, Clerk

January 2, 1996

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 94-3278

JAMES A. HINCHLIFFE and
YONG SUN HINCHLIFFE

v.

FEDERAL HOME LOAN MORTGAGE
CORPORATION

In the Matter of

JAMES A. HINCHLIFFE and
YONG SUN HINCHLIFFE,
Debtors

On Appeal From Bankruptcy No. 90-23339

MEMORANDUM/ORDER

[Dated June 27, 1995, Entered June 28, 1995]

In this appeal, the Hinchliffes challenge the order entered by United States Bankruptcy Judge Stephen Raslavich on April 19, 1994. That order denied the Hinchliffes' motion to hold the Federal Home Loan Mortgage Corporation ("FHLMC") in contempt for pursuing foreclosure proceedings against the Hinchliffes' home.

Although the caption of the Hinchliffes' motion (and of their appeal) names the party to be held in contempt (and the appellee) as

the FHLMC, the answer to the motion was filed by - and the caption of the order appealed from names the opposing party as - G.E. Capital Mortgage Services, Inc. For the purposes of this appeal, the caption is governed by the notice of appeal, which names the FHLMC as the appellee. Nonetheless, the true appellee would appear to be G.E. Capital Mortgage Services, Inc., ("G.E.") - which apparently is the "servicer" for the FHLMC of the mortgage at issue. In any event, although the Hinchliffes appear to have perfected this appeal (albeit by filing a one-page brief), the appellee - whoever it may be - has not filed a responsive brief. Nonetheless, with the exception of a transcript of the hearing held on April 19, 1994, the record is complete, and I shall therefore address the merits of this appeal.

As was the case in Civil Action No. 94-327 7 - another appeal from the Hinchliffes' bankruptcy proceedings, the affirmance of which is filed herewith - the Hinchliffes, who are proceeding pro se, misconceive the provision in the bankruptcy rules, Rule 8005, which governs the granting of a stay pending an appeal from an order of the bankruptcy court. Here the Hinchliffes moved to have FH LMC (or G.E.) held in contempt for proceeding with a sheriff's sale of the Hinchliffe' s home. If I understand the Hinchliffes correctly, they contend that by going ahead with the sale, FHLMC (or G.E.) violated the stay that United States Bankruptcy Judge Thomas M. Twardowski had entered pending the disposition of the appeal of his order of June 26, 1992.

The problem with the Hinchliffes' conten-

tion in this case (as it was in Civil Action No. 94-3277) is that the creditor (in this case, FHLMC or G.E.) received permission to go ahead with the sheriff's sale in Judge Twardowski's order of May 29, 1992 - which order was never appealed. Because the FHLMC (or G.E.) did not violate the stay entered by Judge Twardowski pending the appeal of his order of June 26, 1992, Judge Raslavich correctly denied the Hinchliffes' motion to hold the FHLMC in contempt.

* * * * * *

In accordance with the foregoing, it is hereby ORDERED that the order entered by Judge Raslavich on April 19, 1994, is AFFIRMED.

/s/ Louis H. Pollak

June 27, 1995

Pollak, J.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-1637

JAMES A. HINCHLIFFE;
YONG SUN HINCHLIFFE,
Debtors

JAMES A. HINCHLIFFE;
YONG SUN HINCHLIFFE,
Appellants

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION;
TRANSAMERICA CONSUMER DISCOUNT CO.

SUR PETITION FOR REHEARING

Present: SLOVITER, Chief Judge
BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, MCKEE and SAROKIN, Circuit Judges.

[Dated February 2, 1996]

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not

having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

/s/ Carol Los Mansmann

Carol Los Mansmann
Circuit Judge

February 2, 1996

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 95-1637

James A. Hinchliffe;
Yong Sun Hinchliffe,

vs.

Federal Home Loan Mortgage Corp., et al.

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is O R D E R E D that issuance of the certified judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until March 11, 1996.

/s/ Carol Los Mansmann

Carol Los Mansmann
Circuit Judge

Dated: February 26, 1996